

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7341

BILL NUMBER: HB 1453

NOTE PREPARED: Jan 16, 2011

BILL AMENDED:

SUBJECT: Dealer Services Division of the Secretary of State.

FIRST AUTHOR: Rep. Yarde

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (1) Establishes a Dealer Services Division (Division) within the Office of the Secretary of State (SOS) and provides that the Division administers and has jurisdiction over vehicle dealer (dealer) services (services).
- (2) Provides that: (a) certain administrative procedures and orders are not applicable; and (b) certain procedures relating to administrative rules are applicable; to the Division.
- (3) Provides that a transfer dealer is not considered a dealer.
- (4) Repeals and relocates language concerning vehicle dealer services.
- (5) Provides that a person who violates statutes or rules pertaining to services or an order issued by the SOS pertaining to services is subject to a civil penalty of up to \$10,000 for each violation.
- (6) Establishes the Dealer Enforcement Account to be used to support the Division.
- (7) Provides for criminal penalties for certain violations pertaining to services.
- (8) Establishes procedures: (a) for administration of the Division; and (b) for review of actions by the Division and for judicial action concerning the Division.
- (9) Provides that a dealer is a person who sells at least five vehicles each year or at least six boats or watercraft each year. (Current law provides that a dealer is a person who sells at least 12 vehicles a year for delivery in Indiana or at least six boats or watercraft trailers a year for delivery in Indiana.)
- (10) Makes conforming amendments.

Effective Date: July 1, 2011.

Explanation of State Expenditures: *Summary:* This bill will change state expenditures for the enforcement of new, enhanced, reduced, and deleted penalty provisions governing licensed dealers in the state. The actual

change in state expenditures is unknown.

The bill will increase the workload of the Secretary of State Dealer Services Division by allowing the Dealer Services Division to enforce, through police powers, regulations governing licensed dealers in the state. The expenses of administering the bill (enforcement) are expected to be provided from revenue generated to the Dealer Enforcement Account (also created by the bill).

The bill will also generate an estimated \$111,000 in additional revenue to the General Fund by requiring applicants, as a condition of receiving dealer licensure, to obtain a national criminal history background check (at the expense of the applicant).

Additional Information:

National Criminal History Background Checks: The bill will require applicants for dealer licenses to undergo a national criminal history background check.

A national criminal history background check requires a search of the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification. A national criminal history background check is obtained through the ISP. For every national criminal history background check performed in the state, \$15 is forwarded to the General Fund.

The SOS reports there are currently 7,426 licensed dealers in the state. Licensure is required to be renewed annually. This bill is expected to increase state revenue by approximately \$111,000 per year from the state fee portion for national criminal history background checks.

Dealer Enforcement Provisions: This bill transfers provisions of currently existing statute pertaining to the Dealer Services Division of the Secretary of State to a new section in Indiana Code. The former provisions that pertain to the Dealer Services Division are also repealed by the bill.

The implementation of these provisions are expected to increase the workload of the SOS to provide enforcement and to have no additional fiscal impact on the SOS Dealer Services Division. Currently, the Division operates on an annual budget of approximately \$900,000. The Dealer Services Division operations are self-sustaining from the collection of civil penalties, user fees, and daily transactions completed by the Division.

However, the bill makes changes to penalty provisions in current statute and also creates new penalty provisions (where before violations did not carry a penalty). The penalty provision changes in this bill are included in the table below.

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
Expiration, Replacement, and Transfer of Certificate of Title (IC 9-32-3)	<p>IC 9-17-3-7: Violation of IC 9-17-3 is punishable as a Class C infraction.</p> <p>Violation of IC 9-17-3-3 subsections (a)(1), (a)(2), (a)(4), (a)(5), and (d) commit a Class B misdemeanor.</p> <p>Violating IC 9-17-3-3(a)(3) is considered a Class A misdemeanor for a first offense and a Class D felony for a subsequent offense.</p>	<p>IC 9-32-17-2: Violation of IC 9-23-3 is punishable as a Class C infraction.</p> <p>Violation of IC 9-32-3-2 subsections (a)(1), (a)(2), (a)(4), (a)(5), and (d) commit a Class B misdemeanor.</p> <p>Violating IC 9-32-3-2(a)(3) is considered a Class A misdemeanor for a first offense and a Class D felony for a subsequent offense.</p> <p>IC 9-32-17-9: Violation of IC 9-32-3-2(c) is punishable with a civil penalty of \$100 (first offense), \$250 (second offense), or \$500 (subsequent offense). Revenue deposited in Dealer Enforcement Account.</p>	<p><u>Summary:</u> No change in criminal penalties. May increase civil penalty revenue.</p> <p>Adds civil penalty provisions to IC 9-32-3-2(c) that will increase revenue to the Dealer Enforcement Account.</p> <p>All other violations [excluding IC 9-32-3-2(c)] are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
Manufacturers, Converter Manufacturers, and Dealers; Manufacturers' Certificate of Origin (IC 9-32-4)	<p>IC 9-17-8-9: Violation of IC 9-17-8 is a Class C infraction.</p> <p>Maximum judgement for a Class C infraction is \$500, which is deposited in the General Fund.</p>	<p>IC 9-32-17-9: Violation of IC 9-32-4-2 and IC 9-32-4-8 is punishable with a civil penalty of \$100 (first offense), \$250 (second offense), or \$500 (subsequent offense). Revenue deposited in Dealer Enforcement Account.</p>	<p><u>Summary:</u> Expected to decrease revenue to the General Fund by designating fines for the Dealer Enforcement Account.</p> <p>All other violations (excluding IC 9-32-4 sections 2 and 8) are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
Dealer License Plates (IC 9-32-5)	<p>IC 9-18-26-11: Violation of IC 9-18-11 is considered Class B misdemeanor.</p> <p>IC 9-18-26-12: Violation is considered a Class A infraction.</p> <p>IC 9-18-26-13: Violation is considered a Class C misdemeanor.</p> <p>IC 9-18-26-14: Violation subject to civil penalty between \$50 and \$1,000 per day in violation (paid to the General Fund).</p>	<p>IC 9-32-17-3: Violation of IC 9-32-5 is considered a Class A misdemeanor.</p> <p>IC 9-32-5-13: Violation is a Class C misdemeanor.</p>	<p>The following penalty provisions from current law were not included in the bill.</p> <p>(1) IC 9-18-26-12: Class A infraction.</p> <p>(2) IC 9-18-26-14: Violation subject to civil penalty between \$50 and \$1,000 per day in violation (paid to the state General Fund). This will decrease General Fund revenue.</p> <p>All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
Salvage Motor Vehicles (IC 9-32-8)	<p>IC 9-18-26-11: Violation of IC 9-18-11 is a Class B misdemeanor.</p> <p>IC 9-22-3-31: Class D felony.</p> <p>IC 9-22-3-37: Violation is considered a deceptive act actionable by the Attorney General.</p> <p>IC 9-22-3 sections 4 through 9 (excluding section 7.5): Violations are considered a Class D felony.</p>	<p>IC 9-32-17-4: Violation of IC 9-32-8 is considered a Class B misdemeanor.</p> <p>IC 9-32-8-27: Class D felony.</p> <p>Any violation of IC 9-32-8 also commits a deceptive act actionable by the Attorney General.</p>	<p>IC 9-32-4 sections 4 through 10 of the bill are the same as IC 9-22-3 sections 4 through 9 (excluding section 7.5) of current law. However, the bill specifies that these penalties would only be considered a Class B misdemeanor under the bill. These penalties are currently Class D felonies.</p> <p>All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
Licensing of Vehicle Salvaging (IC 9-32-9)	<p>IC 9-22-4-1: Violation is a Class C infraction.</p> <p>(Only section in IC 9-22-4 to carry a penalty provision.)</p>	<p>IC 9-32-17-5: Any violation of IC 9-32-9 is considered a Class B misdemeanor.</p>	<p>Enhances penalty of IC 9-22-4-1 from a Class C infraction to a Class B misdemeanor and relocates to IC 9-32-9-1.</p> <p>Creates Class B misdemeanor penalty of all other sections in IC 9-32-9 of the bill (which exist in IC 9-22-4 of current law).</p> <p>All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
Regulation of Vehicle Merchandising (IC 9-32-11)	<p>IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.</p>	<p>Violations of IC 9-32-11-1 and IC 9-32-11-13 are both considered Class A misdemeanors in the bill.</p> <p>New Penalty Provision: Violation of IC 9-32-11-18 is considered a Class C misdemeanor.</p> <p>Language in IC 9-32-11 is transferred from IC 9-23 of current law.</p>	<p>Enhances penalty of IC 9-32-11 and 13 from a Class B misdemeanor to a Class A misdemeanor and relocates to IC 9-32-9-11-1 and 13.</p> <p>The bill adds a new penalty provision (IC 9-32-11-18) which is punishable as a Class C misdemeanor.</p> <p>All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>
Disclosures Requires in Motor Vehicle Leases (IC 9-32-12)	<p>IC 9-23-2.5-10: Failing to comply with IC 9-23-2.5 can result in a maximum civil penalty of \$1,000. Total recovery of damages cannot exceed \$100,000.</p> <p>IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.</p>	<p>IC 9-32-17-10: Failing to comply with IC 9-32-12 can result in a maximum civil penalty of \$1,000.</p> <p>Language in IC 9-32-11 is transferred from IC 9-23 of current law.</p>	<p>The bill removes language pertaining to the maximum recovery of damages. This is expected to have no fiscal impact.</p> <p>All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.</p>

Subject Matter	Language in Current Law and Current Penalty	Similar Language in Bill and Penalty As Proposed	Analysis
Unfair Practices (IC 9-32-13)	IC 9-23-6-1: Any violation of IC 9-23 is considered a Class B misdemeanor.	Violation of IC 9-32-13 sections 25 and 26 are punishable as Class A misdemeanors. Language in IC 9-32-11 is transferred from IC 9-23 of current law.	IC 9-32-13 sections 25 and 26 of the bill exist in current law as Class B misdemeanors. The bill enhances these crimes to Class A misdemeanors. All other violations of IC 9-32-13 would be Class B misdemeanors (current). All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.
Administration and Judicial Review (IC 9-32-16)	Language in IC 9-32-16 of the bill does not exist in current law as it pertains to the Secretary of State.	Violation of IC 9-32-16-14 is considered a Class D felony.	This may increase convictions of Class D felonies in the state. All other violations are also subject to a maximum civil penalty of \$10,000 (IC 9-32-17-1). This revenue is deposited in the Dealer Enforcement Account.

The bill adds a new penalty (see *Administration and Judicial Review* in the above chart) that is punishable as a Class D felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

This bill potentially reduces the costs to the state if an offender is convicted of a misdemeanor rather than a felony. However, any cost reduction is likely to be small. Offenders convicted of a misdemeanor who are given a prison term are incarcerated in county jails. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor.

Explanation of State Revenues: The bill creates the Dealer Enforcement Account which is used to finance the administration of the Dealer Services Division. The fund consists of revenue collected from (1) civil penalties prescribed by the SOS and (2) fees and funds of any kind received from the administration of the Dealer Services Division. With the Exception of a select few civil penalties assessed in the bill, all violations of 9-32 will be subject to a maximum civil penalty of \$10,000 per violation in addition to any criminal penalty. This revenue is to be deposited in the Dealer Enforcement Account.

Penalty Provision Changes:

The bill adds penalties that are punishable under the following penalty classifications: Class C misdemeanor (see *Regulation of Vehicle Merchandising* in above chart) and Class B misdemeanor (see *Licensing of Vehicle Salvaging* in above chart). If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class C and a Class B misdemeanor is \$500 and \$1,000, respectively. However, any additional revenue would likely be small.

The bill also removes a Class A infraction (see Dealer License Plates in above chart). The maximum judgment for a Class A infraction is \$10,000, which would be deposited in the state General Fund. However, any additional revenue is likely to be small.

By reducing the Class D felonies in current law to Class B misdemeanors (see *Salvage Motor Vehicles* in the above chart), this bill potentially reduces the revenue to the Common School Fund if additional court cases occur and a fine is assessed. However, the revenue reduction is likely to be small. The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are the same.

Enhancing a Class C infraction to a Class B misdemeanors (see *Licensing of Vehicle Salvaging* column in the above chart) may increase revenue to the Common School Fund, but could reduce revenue that is deposited in the state General Fund. However, any change in revenue is likely to be small. Currently, the maximum judgment for a Class C infraction is \$500, which is deposited into the state General Fund, while the maximum fine for a Class B misdemeanor is \$1,000, which is deposited into the Common School Fund. The state General Fund may receive additional court fee revenue. However, the amount is likely to be small.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenues would likely be small.

Enhancing a Class B misdemeanor to a Class A misdemeanors (see *Regulation of Vehicle Merchandising* and *Unfair Practices* in the above chart) may increase revenue to the Common School Fund if a person is sentenced for a Class A misdemeanor rather than for a Class B misdemeanor. The maximum fine for a Class B misdemeanor is \$1,000, while the maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue is likely to be small. Court fees would remain unchanged.

Explanation of Local Expenditures: The bill (1) enhances violations which are currently Class B misdemeanors to Class A misdemeanors, (2) reduces violations that are currently Class A misdemeanors to Class B misdemeanors, (3) reduces Class D felonies to Class B misdemeanors, (4) creates a new Class C misdemeanor, (5) creates new Class B misdemeanors, and (6) enhances a Class C infraction to a Class B misdemeanor. This may change local expenditures to house offenders.

The maximum term of imprisonment for a Class B misdemeanor is up to 180 days, while the maximum term for a Class A misdemeanor is up to one year. Additionally, a Class C misdemeanor is punishable by up to 60 days in jail. Any change in local government costs is expected to be small.

By enhancing a Class C infraction to a Class B misdemeanor, local expenditures could increase if offenders are incarcerated in local jails instead of being only fined. However, any cost increase is likely to be small.

A Class B misdemeanor is punishable by up to 180 days in jail.

By creating a new Class D felony, more defendants are likely to be detained in county jails prior to their court hearings. To the extent this occurs, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: Local governments could receive additional revenues from any court fees that are collected for cases that were infractions and are now misdemeanors.

State Agencies Affected: SOS, Indiana State Police; Department of Correction.

Local Agencies Affected: Trial courts; local law enforcement agencies.

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